Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OLC, FFT, MNDCT, DRI, RR

Introduction

The tenant applied for various relief under sections 41 through 43, 62, 65, 67, and 72 of the *Residential Tenancy Act* ("Act").

Both parties attended the hearing on December 14, 2021. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Issues

1. Is the tenant entitled to an order regarding a rent increase?
2. Is the tenant entitled to an order for a reduction in rent?
3. Is the tenant entitled to an order for landlord compliance?
4. Is the tenant entitled to compensation?
5. Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenant testified that the tenancy began on September 1, 2019. Rent is $700.00. It is unclear what, exactly, is included in the rent, but internet, water, and electricity appear to be included. It should be noted that there is no written tenancy agreement.

The rental unit consists of a fifth-wheel vehicle situated on an orchard. In addition to the fifth wheel, the tenant explained that he is provided with a parking spot and an area of the surrounding land on which he can grow vegetables. The area is about 30 by 22 feet.

In respect of the claim to dispute a rent increase and an order for a reduction in rent the tenant seeks a reduction in rent by $50.00. A parallel claim is for a dispute of a rent increase. However, the tenant testified that he has not paid rent for November and December 2021 because the landlord has shut off certain services. In addition, the tenant testified that he lost his parking spot after the landlord put another vehicle on top of the parking spot.

The tenant also seeks an order for landlord compliance (section 62 of the Act) He did not expand on this particular claim, though his Application for Dispute Resolution includes the following description (reproduced as written):

> I've been intimidated to move out and threat to my residence to be taking away and burn before and now he texted me that he will be cutting my power and water November 5 also my property been badly damaged by the landlord with he's bobcat and I recorded him doing it just after I texted him back that he could not do that cause of Canada laws. I never receive a explanation from him or a real eviction notice yet but he won't talk to me he sais when he was destroying my greenhouse that he let me do!

Last, the tenant seeks compensation in the amount of $10,544.95 related to the loss of his greenhouse and vegetables. The tenant claims that the landlord destroyed the greenhouse and vegetables, partly through the use of a Bobcat. He lost all of his vegetables. Submitted into evidence were several photographs of the vegetables and receipts for materials and supplies related to the loss of the vegetables and greenhouse.

The landlord testified that he received a letter from the municipality on April 1, 2021, advising him that the fifth wheeler rental unit must be removed. The tenancy and the rental unit are in breach of municipal bylaws (which appear to be related to agricultural land use). The landlord further testified that he talked to the tenant about this and told him “he needs to get his stuff together and find a new place.” According to the landlord, the tenant was “OK with this.”

Some time later, the landlord got in touch with the bylaw officer who authored the letter and was advised that the city would give an extension to the requirement that the tenant vacate. It was until the end of the growing season, which, the landlord explained, was when the irrigation water supply gets turned off in October.

In respect of the greenhouse, the landlord testified that he told the tenant it was okay to have a garden, but nothing was said about it being okay for the tenant to have a greenhouse. The landlord testified that he started to pull the green house down, but that the posts are driven fairly deep into the ground.

The landlord further found it odd that the tenant kept growing vegetables beyond October when the water was shut off. He surmised that the tenant must have been stealing the domestic water supply for gardening purposes; this is not permitted. In any event, the landlord reiterated that "it's not a personal thing," but the city wants the tenant out.

The tenant, in his rebuttal, remarked that there are "so many lies" contained in the landlord's testimony that he would "have to start at the beginning." He explained that the garden was started in June and that the plants were good and health by August.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Claim for Dispute of Rent Increase

In respect of this claim, there is no evidence before me to find that the rent has ever increased above the $700.00 that it was since the start of the tenancy. For this reason, this aspect of the tenant's application is dismissed, without leave to reapply.

2. Claim for Rent Reduction

In respect of this claim, the tenant testified that he was "overpaying" rent by $100.00. However, a claim made under this section of the Act (section 65(1)(f) of the Act) must be related to the reduction in the value of a tenancy agreement. No such argument was advanced in this respect, and I am unable to find that the tenant is somehow entitled to a rent reduction that is linked to overpayment of rent. That, and it must be noted that the tenant admitted to not paying *any* rent for the past two months.

Accordingly, this aspect of the tenant's application is dismissed without leave to reapply.

3. Order for Landlord Compliance

Section 62(3) of the Act states that an arbitrator "may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies."

In respect of this part of the tenant's application, the specific relief sought is rather vague. As such, this aspect of the tenant's application is dismissed without leave to reapply.

That having been said, a few remarks are in order. First, despite what the municipality has stated in its correspondence of April 1, 2021, the municipality has no authority to remove the tenant. Only the landlord has such authority under the Act. That the municipality has sent but one letter, and that they have extended the time for compliance, leads me to find that this cannot be a particularly pressing matter for them.

However, a landlord is expected to comply with bylaw and zoning requirements, and if a tenancy must be ended in order to comply with those requirements, then the landlord must issue a One Month Notice to End Tenancy for Cause under section 47(1)(k) of the Act. Or the parties may enter into a Mutual Agreement to End the Tenancy.

Last, until the tenancy is ended, either through a One Month Notice to End Tenancy for Cause, through a 10 Day Notice to End Tenancy for Unpaid Rent, or through a Mutual Agreement to End the Tenancy, the landlord must (and is thus ordered under section 62(3) of the Act) maintain all services that were provided at the start of the tenancy, including, but not limited to, internet, domestic (non-agricultural) water, and electricity. If the landlord limits or otherwise ceases the provision of services, the tenant may make a further application for dispute resolution for compensation.

4. Claim for Compensation

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

In this dispute, the tenant claims that he was permitted to have a greenhouse full of vegetables. The landlord disputes this and claims that the tenant was only permitted to have a garden, and not a greenhouse.

In cases such as this, when two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In this case, I find that the tenant has failed to provide any evidence that he was, in fact, permitted to have the greenhouse. In the absence of any evidence proving that the tenant had a lawful right to build and keep the greenhouse, I am unable to find that the landlord breached the Act by attempting to remove the greenhouse. Having not found a breach of the Act, no compensation may flow. Accordingly, this aspect of the tenant's application is dismissed, without leave to reapply.

5. Claim for Filing Fee

As the tenant's application was unsuccessful, I decline to grant recovery of the filing fee under section 72 of the Act.

Conclusion

The application is dismissed, without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: December 14, 2021

Residential Tenancy Branch